

# IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

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## COMPLETE TITLE OF CASE

CURRY INVESTMENT COMPANY,

Appellant,

v.

JAMES B. SANTILLI,

Respondent.

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**DOCKET NUMBER WD78899**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** June 28, 2016

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## APPEAL FROM

The Circuit Court of Jackson County, Missouri  
The Honorable Robert L. Trout, Judge

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## JUDGES

Division Two: Victor C. Howard, P.J., and Thomas H. Newton and Karen  
King Mitchell, JJ.

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## ATTORNEYS

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# MISSOURI APPELLATE COURT OPINION SUMMARY

## MISSOURI COURT OF APPEALS, WESTERN DISTRICT

2. Admissions are treated like stipulations, judicial admissions, and admissions in a pleading. Any matters admitted are conclusively established, and not subject to dispute by the opposing party at trial.
3. The court may permit withdrawal or amendment of any issue deemed admitted, when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits.
4. Settlement correspondence, which makes no mention of the requests for admissions propounded by the opposing party, is not sufficient to satisfy the requirements for responding to requests for admissions.
5. The legal rationale for excluding evidence contradicting an admission is that a fact admitted in response to a request for admission is conclusively established, and thus, it is not subject to a credibility determination by the finder of fact. Therefore, if the admission is relied upon at trial by the party that propounded the request, the admission must be accepted as true, and the party that made the admission cannot seek to overcome it by presenting contradictory evidence.
6. Requests for admissions can be used in a motion for summary judgment, in a motion to dismiss, or as evidence in the ensuing trial. Because the effect of admissions made in response to requests for admissions is comparable to a legal admission made in the pleadings of a party, it is not necessary that they be formally introduced into evidence at the trial.
7. A party relying on admissions, however, must ensure that the admissions are presented in some fashion to the trial court, on the record. If the requested admissions are not in the record, it is impossible for the trial court to deem them admitted or to take judicial notice of them. It is also impossible for an appellate court to review for error admissions not contained in the record. The trial court cannot be said to have abused its discretion in not relying on evidence that was never presented for its perusal.
8. Counsel stating what purports to be the substance of two of the requested admissions, in objecting to the opposing party's testimony, is insufficient to put the admissions on the record. Bare assertions by counsel do not prove themselves and are not evidence of the facts presented.
9. Even if the trial court had committed error in failing to exclude Santilli's testimony about the character of the doors, in order to prevail on appeal, Curry would have to demonstrate that he was prejudiced as a result of this error. But Curry does not argue that, without Santilli's testimony, the trial court's judgment would have been against the weight of the evidence. Curry, as the plaintiff, bears the burden of proof. Thus, even if Santilli's testimony should have been excluded, this would result in a reversal only if the evidence presented conclusively proved each of the elements of Curry's case.

10. Because the trial court was free to disbelieve Curry's evidence, and to find that it simply did not prove its case, it cannot show that it was prejudiced by the trial court's allowing Santilli to testify.
11. Articles annexed to realty by a tenant for the purpose of carrying on a trade or business are considered business fixtures and are ordinarily removable by him. That the fixture is particularly adapted to a particular type of building does not, in itself, make it irremovable. If the article is placed in the building for the sole purpose of enabling the tenant to carry on his business, it is removable; but if the article is so placed as to make the building itself peculiarly adapted and more usable for the type of business, then it is a permanent fixture, and not removable.
12. Elements for consideration in distinguishing between business fixtures and permanent fixtures are: (1) the annexation to the realty; (2) the adaption to the use to which the realty is devoted; and (3) the intent that the object become a permanent accession to the land. The burden is on the party asserting the existence of a permanent fixture to prove the elements. Each of the elements must be present to some degree, however slight.
13. The annexation element refers to the physical attachment of the property to the realty. Annexation that may be slight and easily displaced does not prevent an article from becoming a permanent fixture when the other elements are found.
14. The adaptation element refers to the characteristics of fitness or suitability for the building or premises in question. This element is met if the chattel at issue is peculiarly adapted to the real property.
15. The intent element refers to whether the intention in annexing the article to the realty was to make it a permanent accession to the land. Intention is to be determined as of the time the articles were annexed, and it is the intent of the annexor at the time of annexation that controls as to whether something is to be considered a fixture.
16. When an annexation is made by a tenant and is such that the chattel may be removed without material injury to the realty, there is a presumption that the tenant did not intend to make a permanent annexation to the real estate, but intended to reserve to himself the title to the chattel annexed. The law looks with favor upon the right of a tenant to remove articles furnished or installed by him for the purpose of his occupancy even though they may ordinarily be termed "fixtures." All ordinary store fixtures, including showcases and shelving, business signs, and miscellaneous other appliances installed by the tenant may be considered to remain his personal property, unless substantial damage would be the result of removal.
17. Here, Santilli testified that: (1) he purchased the doors for their ease of moving around and repositioning to fit the business's changing needs; (2) he intended the doors to be "equipment" that would remain with the business, and not remain as a fixture in the building; and (3) he "did no damage to the building whatsoever" in installing or removing the doors.

18. The trial court is not bound by the person's testimony on the question of intent, and Curry offered evidence that the removal of the doors actually did damage the building. But the trial court was the arbiter of the facts and was free to believe or disbelieve any of the evidence.

19. The appellate court must view the evidence in the light most favorable to the judgment, and assume the trial court resolved all issues of fact in accordance with the result reached. Accordingly, we assume that the trial court believed Santilli and disbelieved Curry's evidence. Further, even if Santilli's testimony had been excluded, the trial court could have disbelieved Curry's evidence. Thus, the trial court's determination that the doors were business fixtures is not against the weight of the evidence and does not erroneously apply the law.

**Opinion by: Karen King Mitchell, Judge**

June 28, 2016

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.